

REMARKS

The Official Action mailed April 13, 2009, has been received and its contents carefully noted. This response is filed within three months of the mailing date of the Official Action and therefore is believed to be timely without extension of time. Filed concurrently herewith is a *Request for Continued Examination*. Accordingly, the Applicant respectfully submits that this response is being timely filed.

The Applicant notes with appreciation the consideration of the Information Disclosure Statements filed on May 12, 2006 and July 9, 2008.

Claims 1-4, 6, 7 and 11-14 were pending in the present application prior to the above amendment. Claims 1-4, 6, 7, 11 and 12 have been amended to better recite the features of the present invention and new claim 15 has been added to recite additional protection to which the Applicant is entitled. Accordingly, claims 1-4, 6, 7 and 11-15 are now pending in the present application, of which claims 1 and 2 are independent. For the reasons set forth in detail below, all claims are believed to be in condition for allowance. Favorable reconsideration is requested.

The Official Action rejects claims 13 and 14 under 35 U.S.C. § 112, second paragraph asserting that the claims are "indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention" because the Examiner is not sure what the term "near infra-red" encompasses. The Applicant respectfully disagrees and traverses the above assertion in the Official Action.

MPEP § 2171 notes that "the claims must particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant... The [above] requirement is an objective one because it is not dependent on the views of applicant or any particular individual, but is evaluated in the context of whether the claim is definite - i.e., whether the scope of the claim is clear to a hypothetical person possessing the ordinary level of skill in the pertinent art."

The Applicant respectfully submits that the amended independent claims particularly point out and distinctly define the metes and bounds of the subject matter

that will be protected by the patent grant (MPEP § 2171). It is respectfully submitted that one of ordinary skill in the pertinent art would understand near infra-red to mean the range of the infra-red spectrum closest to the spectrum of visible light and to have a sufficiently precise and definite meaning such that the metes and bounds of the claim expression "near infra-red" are readily apparent to any such hypothetical person. Furthermore, in this regard, the Applicant notes that this term appears to be widely used in the literature such that the term can be readily understood to those of ordinary skill in the pertinent art.

Therefore, the Applicant respectfully submits that claims 13 and 14 particularly point out and distinctly claim the subject matter which applicant regards as the invention and are definite. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 112 are in order and respectfully requested.

The Official Action rejects claims 1-4 and 6, 7 and 11-14 as obvious based on the combination of JP 2001-308344 to Yamazaki ('344), U.S. Publication No. 2003/0085720 to Yamazaki ('720) and WO 03/099508 to Sugioka. The Applicant respectfully submits that a *prima facie* case of obviousness cannot be maintained against the independent claims of the present application, as amended.

As stated in MPEP §§ 2142-2144.04, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some reason, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some reason to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the

problem to be solved as a whole would have suggested to those of ordinary skill in the art." In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The prior art, either alone or in combination, does not teach or suggest all the features of the independent claims, as amended. Independent claims 1 and 2 have been amended to recite forming a gate electrode; forming a sidewall on a side of the gate electrode activating a first impurity region; selectively injecting second impurities into the semiconductor substrate more deeply than first impurities to form a second impurity region after forming the sidewall; and activating the second impurity region by a second laser beam. The above referenced features are supported in the specification, for example, by Embodiment modes 2 and 3 and Figures 3A-3B and 5A-5F. The Applicant respectfully submits that Yamazaki ('344), Yamazaki ('720) and Sugioka, either alone or in combination, do not teach or suggest the above-referenced features of the present invention.

Since Yamazaki ('344), Yamazaki ('720) and Sugioka do not teach or suggest all the claim limitations, a *prima facie* case of obviousness cannot be maintained. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) are in order and respectfully requested.

New claim 15 has been added to recite additional protection to which the Applicant is entitled. For the reasons stated above and already of record, the Applicant respectfully submits that new claim 15 is in condition for allowance.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized to charge fees under 37 C.F.R. §§ 1.16, 1.17, 1.20(a), 1.20(b), 1.20(c), and 1.20(d) (except the Issue Fee) which may be required now or hereafter, or credit any overpayment to Deposit Account No. 50-2280.

Respectfully submitted,


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